

FILED
for Roanoke
DEC - 6 2007
JOHN F. CONCORAN, CLERK
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

MARK KEVIN MAYES,)	Civil Action No. 7:07-cv-00132
Petitioner,)	
)	
v.)	<u>FINAL ORDER ADOPTING</u>
)	<u>REPORT AND RECOMMENDATION</u>
)	
UNITED STATES OF AMERICA,)	By: Hon. Jackson L. Kiser
Respondent.)	Senior United States District Judge

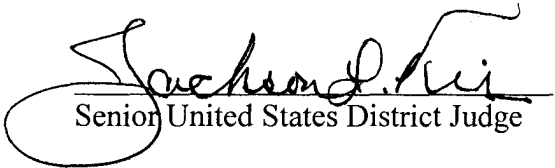
Mark Kevin Mayes filed this action under 28 U.S.C. § 2255, alleging, inter alia, that his counsel provided ineffective assistance by failing to advise him of the following: that the government could reveal his criminal history to the jury in order to undermine his credibility, and that the government could seek an enhancement for obstruction of justice if he committed perjury while testifying; and that a plea agreement could be reached and that there could be a reduction in offense level for a timely plea agreement. Respondent filed a Motion to Dismiss, and by Memorandum Opinion and Order entered on July 20, 2007, I denied Respondent's Motion to Dismiss as to the claims recited above, but granted the motion as to all other claims. By Order entered on July 26, 2007, I referred the remaining claims to United States Magistrate Judge Michael F. Urbanski for an evidentiary hearing, which was conducted on October 2, 2007. The Magistrate Judge filed a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), finding that all of Mayes' claims were without merit and recommending that Respondent's Motion to Dismiss be granted and that Mayes' motion for relief pursuant to 28 U.S.C. § 2255 be dismissed. Mayes, by counsel, timely filed objections, reiterating the arguments made in Mayes' pleadings and at the evidentiary hearings, and incorporating by reference the arguments presented in Petitioner's Memorandum Following Evidentiary Hearing.

Having reviewed the Report and Recommendation, the objections thereto, and the relevant

portions of the record de novo, in accordance with 28 U.S.C. § 636(b)(1), I agree with the Magistrate Judge's recommendation. Accordingly, it is hereby **ORDERED** and **ADJUDGED** that the Magistrate Judge's Report and Recommendation is **ADOPTED** in its entirety, that Respondent's Motion to Dismiss is **GRANTED**, and that Mayes' suit is **DISMISSED** and **STRICKEN** from the active docket of the court.

The Clerk of Court is directed to send copies of this Order to Petitioner and counsel of record for Respondent.

ENTER: This 16th day of December, 2007.


Senior United States District Judge